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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,699	10/27/2003	Farid Bruce Khalili	VER2226-002	2292
8698 7590 05/30/2008 STANDLEY LAW GROUP LLP 495 METRO PLACE SOUTH SUITE 210 DUBLIN, OH 43017				
EXAMINER				
SWIGER III, JAMES L				
ART UNIT		PAPER NUMBER		
3733				
MAIL DATE		DELIVERY MODE		
05/30/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/693,699

Applicant(s)

KHALILI, FARID BRUCE

Examiner

JAMES L. SWIGER

Art Unit

3733

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 58-63 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 58-63 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11/21/2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/5508)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

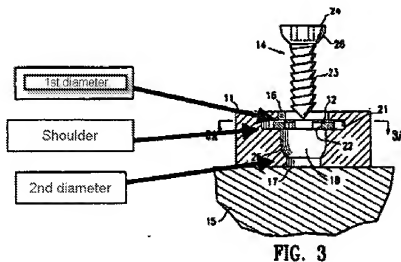
DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 58-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Talaber et al. (US Patent 6,261,291) in view of Bono (US Patent 5,954,722). Talaber et al. disclose an orthopedic implant assembly comprising a screw retention member (11) having a bore formed therethrough (13) with a first and second diameters (see drawing below).



Talaber et al. also disclose a tapered retention seat (34) along an intermediate portion of the passageway, a split ring (22) that has inside and outdoor diameters that allows for

expansion, that is also removably seated in the retention seat (21) that is capable of rotating engagement with the fastener (14) and being moved by the rotation of the fastener. Talaber et al. also disclose a fastener with a shaft (proximate to 23) and a head at one end, the head being generally spherical, and wherein the shaft is threaded for purchase of bone.

Talaber et al. disclose the claimed device except for threads on the head of the fastener to separate the top and bottom portions. Bono disclose fasteners that have thread portions that separate a top and bottom portions (see also col. 3, lines 21-30). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Talaber et al. having at least threads separating the top and bottom of the screw head in view of Bono to better secure the fastener with respect to the plate when inserting the implant into the body.

Talaber et al. disclose the claimed invention except for more specifically a split ring that is frustoconical be seated in the split ring or specifically, a 'monotonical' taper. With regards to the ring shape it would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to construct the split ring with a frustoconical shape or having a retention seat with a complimentary monotonical taper, since applicant has not disclosed that such solve any stated problem or is anything more than one of numerous shapes or configurations a person ordinary skill in the art would find obvious for the purpose of providing having an improved interface between the ring, bone screw, and retention member to prevent backout of the screw for better fixation. In re Dailey and Eilers, 149 USPQ 47 (1966).

The combination of Talaber et al. and Bono further disclose the claimed method including the steps of providing the orthopedic implant having the claimed structure as in claim 58, providing the bone screw with interfaces with the structure of the implant device, and placing the implant to be inserted (see at least Figure. 1 in Talaber et al.) on bone. It would be inherent in the use of the claimed device to rotate the screws with respect to the implant structure as provided by the prior art.

Election/Restriction

After further consideration, applicant's amendments and arguments are persuasive and the election/restriction dated 2/6/2008 is vacated. The claims as represented in the amendment dated 6/7/2007 are in effect. Claim 63 is being considered in view of the vacated election/restriction.

Response to Arguments

With regards to applicant's arguments, it is first noted that the Warden et al. reference was removed from the rejection for the remaining combination, supra. In creating an orthopedic implant assembly, it is known in the art to create plate modifications to prevent back-out of the screws. In US Patent 5,067,956 to Buford, III et al., the screw has a tapered edge on the screw (12) that abuts with a 'monotonically' tapered edge on the inside of the plate (32) that prevents a fastener or bone screw from backing out (see Abstract). While this system, lacks a split ring to assist in this anti-backing out process, the useage of tapers is known in the art. Thus, with regards to applicants arguments on 6/7/2007, it is noted that Talaber et al. '291 has a taper (18) and has a portion designed to catch a frustoconical split ring (upper portion of the

retention area, 22). Both areas are capable of retaining a split ring if compressed to some degree. In the spirit of the invention, as the screw moves through the retention member and split ring, the threads along the screw head aid in the flexing of the split ring to put the fastener through, as taught by. Bono has a bone screw with threads that, at least, are designed to fit through a retention member of some kind (16). In any case, it is held that the specific monotonic taper and complimentary frustoconical portions are obvious shape modifications that help to keep the screw in place after (1) installation via the threads, or so that the ring can better fit into the thread grooves on the screwhead.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James L. Swiger whose telephone number is 571-272-5557. The examiner can normally be reached on Monday through Friday, 9:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3733

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JAMES L SWIGER/

Examiner, Art Unit 3733

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733